IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT APPEAL NO : 828 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 08.12.2004 in WP NO : 16546 OF 2004 on the file of the High Court.)

Between:

B.Appa Rao, S/o.Boraiah,
Staff E.No.455130, R.T.C. Depot, Anakapally, Visakhapatnam Dist.

..... APPELLANT

and

1 The Depot Manager, APSRTC, Anakapally, Visakhapatnam District.
2 The Secretary, APSRTC, Staff Retirement Benefit Scheme, Musheerabad, Hyderabad.
3 Yerramsetti Gangaraju, C/o.Yerramsetti Gurramma,

Sweeper-CUM-Scavenger, APSRTC
Anakapally Garage, R.T.C.Depot, Anakapally,
Visakhapatnam Dist.

.....RESPONDENTS

Counsel for the Appellant:MR.D.LINGA RAO

Counsel for the Respondents: KUM.B.G.UMA DEVI

The Court at the stage of admission, made the following :

JUDGMENT: **(Per the Hon'ble Sri Justice L.Narasimha Reddy)**

The third respondent was employed as a Sweeper-cum-Scavenger in the APSRTC. He raised loan from a Society comprising of the employees of the APSRTC-the 2nd respondent herein. For repayment of the same, the appellant offered himself as a surety. The wife of the third respondent is said to be another surety. The third respondent is said to have been dismissed from service. In the process of effecting recovery of the loan amount, the second respondent approached the first respondent, Depot Manager, Anakapally, where the appellant is working and the first respondent, in turn, started effecting deductions from the salary of the appellant.

Challenging the action of the first respondent, the appellant filed Writ Petition No.16546 of 2004. Through order dated 08.12.2004, the learned single Judge dismissed the writ petition at the admission stage, on taking the view that a surety is as much liable to repay the debt, as is the principal borrower. Hence, the Writ Appeal.

Learned counsel appearing for the appellant submits that the second respondent, which is a Society, registered under the A.P. Co-operative Societies Act, 1964 (for short **'the Act'**) did not initiate any proceedings before the authority under the Act and unless an award is passed by the competent authority, it is not open to the second respondent to seek recovery, much less to approach the first respondent to effect deductions from the salary of the appellant. He further contends that there does not exist any privity of contract between the appellant on the one hand and the first respondent on the other hand and in that view of the matter, the recoveries cannot be sustained.

Learned Standing Counsel for the first respondent, on the other hand, submits that the appellant offered himself as a surety for repayment of the loan, secured by the third respondent, and it is settled principle of law that a creditor can choose to

recover the amounts, due to him, either from the principal borrower or from the sureties.

From the material placed before this Court and submissions made by the learned counsel for the parties, it is evident that the liability, if any, of the appellant is towards the second respondent. If the second respondent is of the view that the appellant, being a surety or the third respondent being the principal borrower, have failed to discharge their obligations, it has to initiate necessary proceedings under Section 61 of the Act, before the concerned authority. It is only when an order of recovery is passed by the competent authority, that necessary steps can be taken by it, against the principal borrower, or the surety. The second respondent cannot assume the character of the adjudicator in a matter of recovery of loan, advanced by it. Equally, the first respondent was not under obligation to effect recoveries on behalf of the second respondent, contrary to the wishes of the appellant and in the absence of any award, passed by the competent authority. It is too early to predict as to what plea could have been open to the appellant in the event of any proceedings, being initiated under Section 61 of the Act against him. One thing, which, however, is certain, is that till such proceedings are initiated by the second respondent, the obligation of the appellant does not arise, nor can the first respondent effect unilateral and forcible recoveries from the salary of the appellant.

For the foregoing reasons, we set aside the order of the learned single Judge and we consequently allow the writ petition directing that the first respondent shall not effect the deductions from the salary of the appellant, towards recovery of loan, due to the second respondent. It is however, made clear that it is open to the second respondent to approach the competent authority under Section 61 of the Act and take necessary steps against the third respondent, the appellant and the other sureties, if any. In case, the competent authority passes any order of recovery, against the appellant herein, it shall be competent for the first respondent to effect necessary deductions.

The writ appeal is accordingly allowed.

(T.MEENA KUMARI, J)

(L.NARASIMHA REDDY, J)

Dt: 25.04.2005

bsv/lvl

To

1 The Depot Manager, APSRTC, Anakapally, Visakhapatnam District.
2 The Secretary, APSRTC, Staff Retirement Benefit Scheme, Musheerabad, Hyderabad.
3 Two CD copies